Petition

81-1291

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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

STATE OF MARYLAND,

Petitioner

v.

ROBERT LAMONT BRYANT,

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF SPECIAL APPEALS OF MARYLAND

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

When an accused in custody invokes his right to counsel after complete Miranda warnings and remains in the presence of one of his co-defendants, both of whom are writing statements, may the police respond to his repeated protestations of innocence by stating that the accused may write whatever he wants as his co-defendants are doing?

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OPINIONS BELOW

The opinion of the Court of Special Appeals of Maryland, Robert Lamont Bryant v. State of Maryland, #1610, September Term, 1980 (filed July 8, 1981), is reported at 49 Md. App. 272, 431 A.2d 714 (1981). A copy of that Court's opinion is reproduced in the appendix hereto as Exhibit A. A copy of the summary denial of the State's

Petition for Writ of Certiorari by the Court of Appeals of Maryland, dated October 7, 1981, is reproduced in the appendix hereto as Exhibit B.

JURISDICTION

On August 26, 1981, Respondent, Robert Lamont Bryant, was convicted by a jury in the Circuit Court for Baltimore County, Maryland, of rape, perverted practices, burglary and theft.[1] His conviction was reversed by the Court of Special Appeals of Maryland in Bryant v. State, 49 Md. App. 272, 431 A.2d 714 (1981). The State of Maryland subsequently petitioned the Court of Appeals of Maryland to issue a writ of certiorari to review the decision of the intermediate appellate court; that petition was denied on October 7, 1981.

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[1]Respondent and a co-defendant, Cleveland Ham, Jr., were tried together and jointly appealed their convictions. The Court of Special Appeals affirmed Ham's conviction. Another accomplice, one Courtney, was convicted in a separate proceeding.

The jurisdiction of this Court to review the decision of the Court of Special Appeals is invoked in accordance with 28 U.S.C. §1257(3).

STATEMENT OF THE CASE

Respondent filed a suppression motion prior to trial, challenging the admissibility of a written statement he prepared while in custody following his arrest on June 13, 1980. At a pretrial hearing held August 22, 1980, the following facts were adduced:

The Baltimore County Police arrested Respondent, concededly with probable cause, as one of three individuals participating in the rape and related sexual offenses of Cheryl Lee on June 12, 1980 and the burglary of her boyfriend's apartment on that same date. The first contact Officer Michael DiPaula had with Bryant occurred shortly after the arrest at 7:30 a.m. on June 13, 1980. When Officer DiPaula first spoke to Bryant, he informed Bryant of his Miranda[2] rights; Bryant said he understood those rights and that he would like to have an attorney present. DiPaula then

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[2]Miranda v. Arizona, 384 U.S. 436 (1966).

left the room to obtain arrest forms and other pertinent processing materials. No questions were asked of Bryant.

At this time, Bryant's accomplices in the crimes were also detained at the police station. Cleveland Ham, Jr. was in the same room with Bryant; an individual named Courtney was in a separate room. When DiPaula returned from obtaining the arrest forms, Bryant began "trying to explain to [DiPaula] his innocence in the case." DiPaula then told Bryant "that Mr. Courtney was writing a statement and Mr. Ham was making a written statement and asked if he wanted to make a statement." Bryant told DiPaula that he did not think he had anything to say, "but [Bryant] would like to have an attorney here and I agreed with him."

After Bryant told DiPaula that he did not believe he could afford an attorney, the officer informed him that he would contact the Public Defender's Office after it opened at 8:00 a.m. When DiPaula placed that telephone call, Bryant was present. Bryant was promptly made aware of the gist of DiPaula's telephone conversation with a secretary at the Public Defender's Office: as soon as she could "get a hold of"

an attorney, she would have that lawyer call the police station.

After Bryant heard this information, the following occurred:

> "[Bryant] continued to tell me, you know, his innocent part in the rape. He said he was, you know, there at the scene of the crime. However, you know, he continued to stress out how he was innocent of the rape to me. And at that time, I told him, I said, well, you know, I am not going to—if you want to make a statement, a written statement like your friends are, it's totally up to you. But I said if you feel you are innocent in this case, I said the statement doesn't have to be a confession. You can put anything you want in there regarding your innocence or your guilt." (emphasis added).

At no time did Officer DiPaula threaten Bryant or tell Bryant it would "go easier on him" if he made a statement; rather, the officer told Bryant that "he could put anything in the statement he wanted regarding his innocence or guilt. It didn't have to be just his guilt."

In response to Bryant's having indicated a desire to "make a statement", DiPaula presented a "waiver of [prompt] presentment"[3] to him. DiPaula explained and read the form

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[3]Maryland District Rule 723 provides that an arrestee must be presented to a judicial commissioner "without unreasonable delay." The sanction for failure to so present the accused was, at the time of Respondent's trial, exclusion of any statement made by the arrestee prior to presentment during the prosecution's case in chief.

to Bryant, who then read the form himself and signed it "with no hesitation". Bryant was given an opportunity to ask questions about the waiver form and asked DiPaula "to put it in plain language", which the officer did. After signing the waiver form, Bryant, according to Officer DiPaula:

> "...once again became hesitant to make a written statement at which time I advised him that that was fine and that if he didn't wish to make a written statement like his friends or acquaintances did, after the preliminary paperwork would only take about another five minutes, we would put him in a cell until the time for his hearing."

Such a five minute delay for the completion of preliminary paperwork, as well as the subsequent placement in a cell, was adherence to standard procedure, according to DiPaula.

Bryant, hearing about the cell, changed his mind again and said that he "would probably like to make a written statement". At no time prior to this second change of mind did Officer DiPaula threaten Bryant regarding a statement, exhibit a gun to him, tell him "it would go easier on him if he made a statement," or hold out any inducements to him whatsoever.

Immediately before Bryant actually wrote out his statement, DiPaula showed him the bottom of the form on which his statement was to be placed and again advised

Bryant of a "list of rights," which he read to Bryant and allowed Bryant to read. The rights set forth are those accorded an individual under Miranda. The form included explicit language discussing, inter alia, waiver of counsel and the suspect's right to curtail questioning. Bryant signed the document and begun writing his statement at approximately 9:30 a.m.

Officer DiPaula testified at the suppression hearing that "just before" Bryant wrote out the statement, he took Bryant across the hall to a room where Courtney was writing his statement in the presence of another police officer. DiPaula's reason for doing so was "to see if I could separate [Bryant] from Mr. Ham at the time." Ham, an accomplice and co-defendant, had been seated in the room with Bryant. Because "there are only so many rooms in the police station," DiPaula sought to move Bryant to a separate room for purposes of writing the statement. However, he did not know whether Courtney had finished writing his statement at the time he took Bryant across the hall because the door leading into the Courtney interview room was closed.

Bryant's testimony at the suppression hearing differed from that of Officer DiPaula. He admitted he was informed of his Miranda rights, but he claimed that DiPaula made no telephone calls in his presence and that DiPaula had placed him in a cell for one-half hour. Bryant alleged that DiPaula "kept more or less nagging" him to make a written statement. He claimed that his statement was "not accurate

at all" because he "left out a lot that I wanted to put in." Bryant admitted that he understood his Miranda rights and with regard to his execution of the waiver of prompt presentment form acknowledged, "I wasn't threatened or anything. I did read it and sign it." Although Bryant claimed DiPaula did not read any information from the police department Miranda waiver form, he admitted that he signed such a document which contained language indicating that he understood the document's Miranda warnings.

At the conclusion of the suppression hearing, the trial court determined that Officer DiPaula had honored Bryant's requests for counsel by telling him "that's all right. It's within your rights. You don't have to sign [the waiver of rights form]." The trial court further found as fact that:

> "The evidence is that then later, five minutes later the prisoner waived his rights to remain silent which he had asserted twice. He decided he would write a statement anyway....the law is as I gathered from arguments and as I remember from my own reading of it, that a person who has a Constitutional right to have a lawyer present, and that a person also has the capacity if he is compos mentis, understanding what he is doing, to waive that Constitutional right just as he has the capacity to waive his Constitutional right to a jury trial after once electing to be tried by a jury. And that being the law, I find that having twice asked for an attorney, and the third time having said, well, I'm ready to write a statement without an attorney, that his Constitutional rights are not violated when the officer then takes the statement instead of waiting till the attorney arrives. Under the circumstances

present as is revealed by the testimony, I find that the Motion to Suppress ought to be denied."

ARGUMENT

THE TRIAL COURT CORRECTLY DETERMINED THAT BRYANT'S WAIVER OF HIS PREVIOUSLY INVOKED RIGHT TO COUNSEL WAS VALID.

Relying on this Court's recent decision in Edwards v. Arizona, 451 U.S. ___, 101 S.Ct. 1880 (1981), the Court of Special Appeals held that Bryant's statement should have been suppressed:

> "When Bryant exercised his right to have counsel present, all interrogation should have ceased. Instead, it was continued by the officer's using the ploy of keeping him in the same room with Ham, while Ham wrote a statement and also taking Bryant into a room where the accused was making a statement. Such action on the part of the police was obviously calculated to underpin the detective's statement to Bryant that the accomplices had confessed.
>
> Patently, the detective was endeavoring to cause Bryant to retreat from the Miranda fortress and to surrender his will to the officer because the battle was lost anyhow. It is precisely that type of "persuasion," duress, coercion, or intimidation that is forbidden by Miranda and Edwards.
>
> The statement of Bryant should have been suppressed...." 49 Md. App. at 283.

The crux of this holding was the view of the Court of Special Appeals that once the presence of counsel has been invoked, Edwards forbids the police from "directly or indirectly, initiat[ing] another attempt at interrogation until

and unless counsel for the accused, arrestee, or suspect is present", subject however to subsequent initiation by the suspect of "further communication, exchanges or conversations with the police" which may lead to a finding of valid waiver. Id.

The Court of Special Appeals assessed Edwards' impact on the conduct of the police with respect to interaction with an accused following an invocation of the right to counsel:

> "We think it transpicuous that efforts by law enforcement officers to induce an ensuing waiver of the right to the presence of counsel cannot and will not be tolerated. Violation of Miranda-Edwards will lead to the suppression of any evidence obtained in contravention thereof, except as may be permitted by Harris v. New York, supra. We point out that the bounds of both the Fifth Amendment and Article 22 of the Maryland Declaration of Rights are exactly the same as those of the conduct they seek to prevent. Attempts to manipulate the mental process of the accused, arrestee, or suspect in order to 'psyche' him or her into changing his or her mind about the presence of counsel are just as devastating to individual rights as is the use of the 'rubber hose'. The only difference between the two types of coercion is the matter of the degree of the duress.
>
> We emphasize, even at the expense of redundancy, that Miranda and Edwards mean exactly what they say: Once the accused requests the presence of counsel at a custodial interrogation, the Fifth Amendment to the Constitution of the United States of America and Article 22 of the Maryland Declaration of Rights are ipso facto invoked and all questioning must cease....We again caution that once the right to

> the presence of counsel has been made by the accused, arrestee, or suspect, any attempt by the authorities to 'spark' the accused's 'own initiative' will contaminate the waiver and render it a nullity. A valid waiver of Miranda-Edwards is the route of all admissible confessions or other inculpatory statements." 49 Md. App. at 279-280. (emphasis in original).

Petitioner submits that review by this Court of the decision of the Court of Special Appeals is clearly desirable and in the public interest. Given that court's interpretation of Edwards, the propriety of Officer DiPaula's actions following Respondent's invocation of his right to counsel has broad significance to establishing guidelines both for police conduct following invocation of the right to counsel, and for determining the validity of a subsequent waiver of that right.

A. Edwards

The recent decision of this Court in Edwards does not render Bryant's statement inadmissible and is easily distinguished on its facts. There, after Edwards was arrested, he was informed of his Miranda rights. He said he understood them and that he was willing to submit to questioning. The police told Edwards that another suspect in custody had implicated him in the crime but Edwards denied any involvement and gave a statement to the police which essentially provided Edwards with an alibi. The statement was tape-recorded; when he was finished, Edwards said he wanted to "make a deal" and was permitted to talk to the county attorney on the telephone. When no deal was struck, Edwards said, "I want an attorney before I make a deal." 101

S.Ct. at 1882. All questioning then ceased, and Edwards was taken to the county jail for the night.

On the following morning, two detectives arrived at the jail to see Edwards. The detention officer informed Edwards that the detectives wanted to talk to him, but Edwards said that he did not wish to speak to anyone. The guard nevertheless told him that "he had to talk to them and took him to meet with the detectives." Id. (emphasis added). The detectives identified themselves, told him they wished to speak to him, and recited the standard Miranda warnings. Edwards indicated a willingness to talk, on the condition that he be permitted to hear the taped statement of his accomplice first. After it was played, Edwards agreed to write a statement so long as it was not tape-recorded.

Edwards moved pretrial to suppress his confession, claiming it was obtained in violation of Miranda because of the morning visit at the jail by the two detectives after he had invoked his right to counsel. The trial court initially granted the motion but subsequently changed its ruling. The Arizona Supreme Court affirmed Edwards' conviction. It found an adequate invocation by Edwards of his rights to counsel and to remain silent but further determined that Edwards had waived those rights at the morning meeting with the detectives.

In overturning the Arizona decision, this Court determined that "however sound the conclusion of the State courts is to the voluntariness of Edwards' admission may be,

neither [court]...undertook to focus on whether Edwards understood his right to counsel and intelligently and knowingly relinquished it." 101 S.Ct. at 1884. Noting that it had "strongly indicated that additional safeguards are necessary when the accused asks for counsel", the Court held:

> "...When an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be estabished by showing only that he responded to further police initiated custodial interrogation even if he has been advised of his rights. We further hold that an accused such as Edwards, having expressed his desire to deal with the police only through counsel, it is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges or conversations with the police." Id. (emphasis added).

This Court emphasized, however, that "we do not hold or imply that Edwards was powerless to countermand his election or that the authorities could in no event use any incriminating statements made by Edwards prior to his having access to counsel." Id.

B. Interrogation

Petitioner submits that the behavior of the police in the instant case was far different and did not contravene Miranda. On those occasions when Bryant indicated that he wanted to see an attorney, questioning by DiPaula ceased. Unlike Edwards, who plainly stated that he did not want to speak with the police and who demonstrated his resolve by saying nothing until the police coerced him by telling him he

"had to" talk, Bryant's requests for counsel and changes of mind regarding his decision were part of his continuing disposition to talk with the police, regardless of the absence of counsel. Throughout the processing, Bryant continually told DiPaula that although he was present at the scene of the crime he was nevertheless "innocent".

As Bryant continued to "[try] to explain to [DiPaula] his innocence in the case," DiPaula asked him again whether he wanted to make a statement. Petitioner submits that such an inquiry is not improper. Edwards, supra, 101 S.Ct. at 1888 (Powell, J. concurring); Rhode Island v. Innis, 446 U.S. 291, 100 S.Ct. 1682, 1688-90 (1980).

With regard to the "interrogation" analysis of Officer DiPaula's actions, the Court of Special Appeals found, despite the absence of any such testimony or factual finding at the suppression hearing, that DiPaula was using "the ploy of keeping [Bryant] in the same room with Ham, while Ham wrote a statement and also of taking Bryant into a room where the other accused was making a statement." 49 Md. App. at 283. Given that finding, the Court of Special Appeals further determined that DiPaula's actions were

> "obviously calculated to underpin the detective's statement to Bryant that the accomplices had confessed...Patently, the detective was endeavoring to cause Bryant to retreat from the Miranda fortress and to surrender his will to the officer because the battle was lost anyhow." 49 Md. App. at 283.

Merely because Bryant sat in the room, not being questioned, while his accomplice, Ham, was "writing a statement", does not render involuntary Bryant's subsequent decision, after adequate Miranda warnings, likewise to discuss his role in the crime. The Court of Special Appeals determined that Bryant's later momentary placement in a room with Courtney (also a suspect at the time) and his return to the room where Ham was writing a statement to be an interrogation technique.

That determination ignores the uncontradicted testimony of Officer DiPaula that because "there are only so many rooms in a police station" he could not separate Appellant from both Ham and Courtney. It further ignores DiPaula's testimony at the suppression hearing, again uncontradicted, that his sole purpose in taking Bryant to the room where Courtney was subsequently discovered was for the purpose of separating him from Ham. No evidence was ever offered to refute DiPaula's explanation that Bryant remained in the room with Ham after invoking his right to counsel because certain paperwork was necessary before Bryant could be placed in a cell, as a routine procedure. Moreover, it has been recently held in People v. Crowson, ___ Cal. App. 3d ___, 30 Cr.L. 2133 (decided October 2, 1981) that the placement of two robbery suspects in the back of a police car when police hoped such placement would cause them to make incriminating statements to each other (and hid a tape recorder in the front seat to record the anticipated

conversation) was not an interrogation technique under Rhode Island v. Innis, supra.

Finally, Petitioner submits that DiPaula's telling Bryant that his accomplices were writing statements and implicating him in the crime, as well as keeping Bryant in the same room with an accomplice until the paperwork was completed, did not constitute interrogation. See Rhode Island v. Innis, supra; People v. Crowson, supra.

C. Initiation

The Court of Special Appeals did not discuss the question of whether Bryant, after indicating a desire to speak with counsel subsequently "initiate[d] further communication, exchanges or conversations with the police." Edwards, supra, 107 S.Ct. at 1885. As previously discussed, Bryant's continued attempts to convince DiPaula of his "innocence", despite having requested counsel, indicate a disposition to talk and were not preceded by questioning from Officer DiPaula; such circumstances, given the lack of prompting by the officer, evidence a patent initiation under Edwards by Bryant of the continued discussion. Compare White v. Finkbeiner, 611 F.2d 186 (7th Cir. 1979), vacated and remanded for reconsideration in light of Edwards, 49 U.S.L.W. 3882 (May 8, 1981). Given the repeated Miranda warnings to Bryant, his clear understanding of his rights to counsel and to remain silent, and his continued attempts to explain his "innocence" to DiPaula despite having requested counsel, it is clear that Bryant made a knowing and intelligent waiver of

his right to counsel prior to giving the written statement regarding his role in the crimes. See Fare v. Michael C., 442 U.S. 707 (1979); North Carolina v. Butler, 441 U.S. 369 (1979).

CONCLUSION

As Justice Powell presciently predicted in his concurring opinion in Edwards, "few cases" involving police-arrestee communications and the waiver of a previously invoked right to counsel "will be as clear" for judicial determination as Edwards. 101 S.Ct. at 1888. The instant case presents this Court with an important and substantial opportunity to establish guidelines, for lower courts and police alike, by which the behavior of the police can be assessed when the "not unusual" situation occurs where the arrestee "who previously has expressed an unwillingness to talk or a desire to have a lawyer...change[s] his mind and even welcome[s] an opportunity to talk." 101 S.Ct. at 1888. Further, the extent to which a policeman may inquire, subsequent to the arrestee's invocation of the right to counsel, whether the arrestee has changed his mind is severely, and Petitioner submits, unnecessarily, curbed by the decision of the Court of Special Appeals in the instant case.

For the foregoing reasons, Petitioner respectfully requests this Court issue a writ of certiorari to the Court of Special Appeals of Maryland.

Respectfully submitted,

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Appendix

ROBERT LAMONT BRYANT AND CLEVELAND HAM, JR. v. STATE OF MARYLAND

[No. 1610, September Term, 1980.]

Decided July 8, 1981.

CRIMINAL LAW — EVIDENCE — *Admissibility Of Inculpatory Statement Of Accused — Taken During Custodial Interrogations And After Invocation Of Right To Counsel — Effect Of Edwards v. Arizona On Miranda Principle — Edwards Holding Does Not Expand Upon Miranda Breadth But Serves To Underscore Concept That When Accused, Arrestee Or Suspect At Any Custodial Questioning Demands Right To Counsel All Interrogation Must, At This Point, Cease Until Counsel For Accused Is Present — Edwards Likewise Makes Perspicuous Notwithstanding Prior Invocation Of Miranda Tenet Of Right To Presence Of Counsel, Accused May Validly Waive That Right Provided He Himself Initiates Further Communication, Exchanges Or Conversation With Police — Any Attempt By Authorities To "Spark" Accused's "Own Initiative," After Invocation Of Miranda Tenet, Held To Contaminate Waiver And Render It A Nullity — Held That, In Instant Case, Trial Court Erroneously Admitted Inculpatory Statement Of Accused Where Evidence Clearly Established That Officer's Persistent Use Of A Ploy Amounted To Coercion And Persuasion And Was Distinctly Characteristic Of The Very Techniques Forbidden In Miranda.* pp. 278-280, 283

H. E. F.

Appeal from the Circuit Court for Baltimore County (HAILE, J.).

Robert Lamont Bryant and Cleveland Ham, Jr., were convicted by a jury of rape, perverted practices, burglary and theft and from judgments entered thereon, they appeal.

Judgments as to the appellant, Bryant, reversed, and case remanded for a new trial. Costs not to be reallocated. Maryland Rule 1082 f.

Judgments as to the appellant, Ham, affirmed. One-half of the costs to be paid by appellant Ham.

The cause was argued before GILBERT, C. J., and THOMPSON and LOWE, JJ.

EXHIBIT A

Arthur A. DeLano, Jr., Assistant Public Defender, with whom was *Alan H. Murrell, Public Defender*, on the brief, for appellants.

Philip M. Andrews, Assistant Attorney General, with whom were *Stephen H. Sachs, Attorney General, Sandra A. O'Connor, State's Attorney for Baltimore County*, and *Dennis C. Whelley, Assistant State's Attorney for Baltimore County*, on the brief, for appellee.

GILBERT, C. J., delivered the opinion of the Court.

I.

—*THE LAW*—

The road to a civilized society leads past the use of the "rubber hose," the "rack," the "Chinese boot," and other "third degree" [1] methods of obtaining "confessions" from persons accused of the commission of criminal acts.

Although there may be some remote areas of the country where the "third degree" is still occasionally practiced, it is safe to state that as a general rule the physical abuse aspect of interrogation has been brought to a halt. For discussion of what constitutes an interrogation, *see Rhode Island v. Innes*, 446 U.S. 291, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980).

The Supreme Court of the United States, in a series of cases, *Escobedo v. Illinois*, 378 U.S. 478, 84 S. Ct. 1758, 12 L. Ed. 2d 977 (1964); *Leyra v. Denno*, 347 U.S. 556, 74 S. Ct. 716, 98 L. Ed. 2d 948 (1954); *Malinski v. New York*, 324 U.S. 401, 65 S. Ct. 781, 89 L. Ed. 1029 (1945); *Ashcraft v. Tennessee*, 322 U.S. 143, 64 S. Ct. 921, 88 L. Ed. 1192 (1944); *Ward v. Texas*, 316 U.S. 547, 62 S. Ct. 1139, 86 L. Ed. 1663 (1942); *Vernon v. Alabama*, 313 U.S. 547, 61 S. Ct. 1092, 85 L. Ed. 1513 (1941); *White v. Texas*, 310 U.S. 530, 60 S. Ct. 1032, 84 L. Ed. 1342 (1940); *Canty v. Alabama*, 309 U.S. 629,

1. The term "third degree" came into our language in the 1890's. Stuart B. Flexner, *Hear America Talking* 275 (1976).

60 S. Ct. 612, 84 L. Ed. 988 (1940); *Chambers v. Florida*, 309 U.S. 227, 60 S. Ct. 472, 84 L. Ed. 716 (1940); *Brown v. Mississippi*, 297 U.S. 278, 56 S. Ct. 461, 80 L. Ed. 682 (1936), culminating in the landmark decision of *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), has nullified the legality of confessions obtained through duress, whether physical or mental.

In *Miranda*, the Court, speaking through Chief Justice Warren, said: " 'Since *Chambers v. Florida*, 309 U.S. 227, this Court has recognized that coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition.' *Blackburn v. Alabama*, 361 U.S. 199, 206, [80 S. Ct. 274, 279, 4 L. Ed. 2d 242, 247] (1960)." 384 U.S. at 448, 86 S. Ct. at 1614, 16 L. Ed. 2d at 709.

The Court observed that "[i]nterrogation still takes place in privacy" and that "[p]rivacy results in secrecy," which leaves "a gap in our knowledge as to what in fact goes on in the interrogation rooms." *Id.* In order to minimize the loss of knowledge as to what occurs during the privacy of custodial questioning, while simultaneously assuring, insofar as possible, that any confession is actually voluntary, the Chief Justice, for the Court, spelled out a litany to be read to each arrestee, suspect, or accused before interrogation is commenced.[2]

Miranda mandates that:

> "[W]hen an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege, and unless other fully effective means are adopted to notify the per-

2. The Court did not proclaim that the written document containing the *Miranda* warnings and the waiver of those rights be *signed* by the arrestee, suspect, or accused before a statement can be admitted into evidence. The better practice for the police, however, is, when possible, to obtain such a written waiver.

> son of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him." (Footnote omitted). *Id.* at 478-79, 86 S. Ct. at 1630, 16 L. Ed. 2d at 726.

Chief Justice Warren made clear that "[t]he requirement of warnings and waiver of rights is fundamental with respect to the Fifth Amendment privilege and not simply a preliminary ritual to existing methods of interrogation." *Id.* at 476, 86 S. Ct. at 1629, 16 L. Ed. 2d at 725.

Dire consequences were predicted by some law enforcement officers as a result of what they saw as the unwarranted shackles placed upon them by *Miranda*. Confessions, it was said, would be virtually eliminated. Nevertheless, we have found no statistics indicating that *Miranda* has reduced the number of confessions, nor do we perceive that it has unduly hampered the police.

The end of what has been styled "the Warren Court" and the beginning of what is now known as "the Burger Court" gave rise to widespread speculation that *Miranda* would be shortlived. Indeed, in holdings such as *Harris v. New York*, 401 U.S. 222, 91 S. Ct. 643, 28 L. Ed. 2d 1 (1971), the Court seemed to chip away at *Miranda* and to be fashioning a coffin

for *Miranda's* ultimate demise as a viable constitutional force. *Miranda* critics, and they were numerous, thought that "the outlook was extremely rocky for the . . . [*Miranda*] nine." [3] It was just a matter of time, they said, until the "right" case would be heard by the Supreme Court and *Miranda* would be unlamented past history.

Those prognosticators of *Miranda's* expiration must have sustained an intellectual jolt when the Court filed *Edwards v. Arizona*, 49 U.S.L.W. 4496 (filed May 18, 1981).[4]

In that case, Edwards was arrested by Arizona authorities for robbery, burglary, and first degree murder. He was furnished with the *Miranda* warnings and agreed "to submit to questioning." He was "told that another suspect already in custody had implicated him in the crime[.] Edwards denied involvement and gave a taped statement presenting an alibi defense." *Id.* Later, Edwards "sought 'to' make a deal.'" Following an attempt to reach the county attorney on the telephone, Edwards exclaimed, "*'I want an attorney before making a deal.'* At that point, questioning ceased and Edwards was taken to county jail." *Id.*

The next morning, two other police officers, who were colleagues of the officer that attempted to interrogate Edwards the night before, went to the jail to see Edwards. Edwards replied that he did not want to speak to them. A guard told him that "'he had'" to talk to the officers. The officers identified themselves to Edwards and informed him again of his *Miranda* rights. Edwards then made an inculpatory statement.

Prior to trial, Edwards moved to suppress the statement and the trial court granted the motion. Arizona, unlike

3. With an apology of Ernest Lawrence Thayer and his immortal, *Casey at the Bat*.

4. The opinion in *Edwards* was written by Justice White. Chief Justice Burger filed a concurring opinion on the judgment. Justice Powell concurred in the result, and Justice Renquist joined in that concurrence. The other five justices were aligned with Justice White, who interestingly, dissented in *Miranda*. *See* 384 U.S. at 526-45, 86 S. Ct. at 1655-64, 16 L. Ed. 2d at 753-64.

Maryland, permits the State to appeal adverse suppression rulings. On appeal, the Supreme Court of Arizona reversed.[5]

Edwards makes explicit what *Miranda* made implicit, and that is, *when an accused, arrestee, or suspect invokes his constitutional right to have counsel present during any custodial interrogation, all questioning must cease.*

The Supreme Court said:

> "[A]lthough we have held that after initially being advised of his *Miranda* rights, the accused may himself validly waive his rights and response to interrogation, *see North Carolina v. Butler,* . . . [441 U.S. 369, 99 S. Ct. 1755, 60 L. Ed. 2d 286 (1979)], the Court has strongly indicated that additional safeguards are necessary when the accused asks for counsel; and *we now hold that when an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights.* We further hold that an accused such as Edwards, having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges or conversations with the police." (Footnote omitted.) (Emphasis supplied.) *Id.* at 4497-98.

Miranda made crystalline that an accused, arrestee, or suspect was entitled to counsel at any custodial interrogation, unless he or she made a knowing and intelligent waiver of that constitutionally guaranteed individual right.

---

5. The facts are taken from the opinion of Justice White in *Edwards*. That opinion, in footnote 1, explains that Justice White, in turn, took the facts from the opinion of the Supreme Court of Arizona.

We read *Edwards* as laying to rest all speculation that *Miranda* is dead or dying. On the contrary, *Edwards* makes pellucid that *Miranda* is alive and well.

Edwards does not, in our view, expand upon *Miranda's* breadth but, rather, serves to underscore that when an accused, arrestee, or suspect, at any custodial questioning, demands his right to have counsel present, *all* interrogation must at that point cease until counsel for the accused, arrestee, or suspect is present. Once the right to the presence of counsel has been invoked, the authorities may not thereafter, directly or indirectly, initiate another attempt at interrogation until and unless counsel for the accused, arrestee, or suspect is present.

Edwards makes perspicuous that notwithstanding the prior invocation of the *Miranda* tenet of the right to the presence of counsel, the accused, arrestee, or suspect may validly waive that right provided the accused, arrestee, or suspect, himself, initiates "further communication, exchanges or conversations with the police." *Id. See also North Carolina v. Butler*, 441 U.S. 369, 99 S. Ct. 1755, 60 L. Ed. 2d 286 (1979). The burden of showing a waiver of *Miranda* rights rests on the prosecution. "[A] valid waiver of . . . [the right to counsel] cannot be established by showing only that . . . [the accused, arrestee, or suspect] responded to further police-initiated custodial interrogation even if he has been advised of his rights." (Footnote omitted.) *Edwards v. Arizona, supra* at 4498.

We think it transpicuous that efforts by law enforcement officers to induce an ensuing waiver of the right to the presence of counsel cannot and will not be tolerated. Violation of *Miranda-Edwards* will lead to the suppression of any evidence obtained in contravention thereof, except as may be permitted by *Harris v. New York, supra*. We point out that the bounds of both the Fifth Amendment and Article 22 of the Maryland Declaration of Rights are exactly the same as those of the conduct they seek to prevent. Attempts to manipulate the mental process of the accused, arrestee, or suspect in order to "psych" him or her into changing his or her mind about the presence of counsel are just as

devastating to individual rights as is the use of the "rubber hose." The only difference between the two types of coercion is the matter of the degree of the duress.

We emphasize, even at the expense of redundancy, that *Miranda* and *Edwards* mean exactly what they say: once the accused requests the presence of counsel at a custodial interrogation, the Fifth Amendment to the Constitution of the United States of America and Article 22 of the Maryland Declaration of Rights are *ipso facto* invoked, and *all questioning must cease.*

Previously, in *Wantland v. State,* 45 Md. App. 527, 535, 413 A.2d 1376, 1381 (1980), *cert. denied,* Md. (filed September 4, 1980), *cert. granted and judgment vacated, case remanded for reconsideration in the light of Edwards v. Arizona, supra,* 29 Cr. L. 3074 (1981), we said:

> "[A]n accused may decline to rely upon the safeguards afforded by the Fifth and Sixth Amendments. Consequently, the police may interrogate him. When that is alleged to be the situation, '[a] heavy burden rests upon the . . . [State] to demonstrate that the defendant knowingly and intelligently waived his privilege[s]. . . .' *Miranda, supra* at 475, 86 S. Ct. at 1628, 16 L. Ed. 2d at 724. 'The courts must presume that a defendant not waive his rights; [so that] the prosecution's burden [of showing a waiver] is great. . . .' *North Carolina v. Butler,* 441 U.S. 369, 373, 99 S. Ct. 1755, 1757, 60 L. Ed. 2d 286, 292 (1979). *See also Tague v. Louisiana,* 444 U.S. 469, 100 S. Ct. 652, 62 L. Ed. 2d 622 (1980). Waiver is not a matter of form, but rather one of fact weighed in the light of the totality of the circumstances. *Fare v. Michael C.,* 442 U.S. 707, 99 S. Ct. 2560, 61 L. Ed. 2d 197 (1979). *See also North Carolina v. Butler, supra.*
>
> At any suppression hearing, the State must carry the onus of establishing by a preponderance of the evidence that the waiver was voluntary, knowing, and intelligent. *Lego v. Twomey,* . . . [404 U.S. 477,

92 S. Ct. 619, 30 L. Ed. 2d 618 (1972)]; *Mulligan v. State*, . . . [18 Md. App. 588, 308 A.2d 418 (1973)].

We again caution that once the right to the presence of counsel has been made by the accused, arrestee, or suspect, any attempt by the authorities to "spark" the accused's "own initiative" will contaminate the waiver and render it a nullity. A valid waiver of *Miranda — Edwards* is the root of all admissible confessions or other inculpatory statements.

II.

—THE INSTANT CASE—

A.

Against the *Miranda — Edwards* backdrop, we consider the appeal of Robert Lamont Bryant and Cleveland Ham, Jr.

The appellants were convicted by a jury in the Circuit Court for Baltimore County of rape, perverted practices, burglary, and theft.[6]

The victim testified that she was alone in the apartment of her boyfriend, Jerome Weaver, when she heard someone banging on the door. She looked through the peephole in the door and saw one short man and two taller men standing in the hallway. The shorter man stated that he was looking for a box which was located on a table in the apartment. After receiving assurances that she was in no danger, the victim unlocked the upper of two locks on the door. At that point, one of the men pushed the door in, knocking her against the wall. The victim said that the shorter man hit her in the face and forced her into a bedroom where he raped her. According to the woman, she was raped repeatedly by each of the men and forced to perform fellatio upon them. The men, who had been wearing nylon stocking masks when they entered the apartment, later removed them.

6. *See* Md. Ann. Code art. 27, § 342.

When the culprits left the apartment, they carried away a television set, as well as stereo equipment.

Approximately twenty minutes after that point, the victim noticed police officers outside the apartment. She signaled to them for help. On direct examination, the witness told the jury that she had never seen her assailants before the incident. On cross-examination, however, she admitted having seen one of them, the appellant, Ham, shooting dice with her boyfriend earlier that same evening.

Ham testified in his own defense that he, Bryant, and another person had gone to the apartment of Weaver in order to settle a score with Weaver, who had won Ham's paycheck in the "crap game." Weaver, Ham said, used "loaded dice." Ham further testified that he had sexual relations with the victim, but he had done so with her express consent.

Admitted into evidence, over objection, were partially inculpatory statements made by both appellants during the time that they were detained by police. A third assailant, not a party to this appeal, also made a statement to the officers.

On appeal, Bryant has raised the argument that his statement was taken in violation of *Miranda*. Both appellants contend that the trial court committed other reversible errors. We shall discuss Bryant's individual argument first.

B.

The record shows that a pre-trial suppression hearing was held on the question of the admissibility *vel non* of Bryant's statement. The testimony of Ham and Bryant differed markedly from that of Officer Michael DiPaula.

DiPaula testified that on the day of the arrest, he read Bryant the *Miranda* warnings. DiPaula further stated that Bryant indicated that he wanted a lawyer to be present. Interrogation immediately ceased. Bryant and Officer DiPaula, however, remained in a detention room while DiPaula took care of some preliminary procedural matters

involving Bryant. Meanwhile, Ham was in the same room and was busy writing out a statement for the police.

DiPaula admitted telling Bryant that the two accomplices were making statements implicating Bryant. DiPaula further admitted to taking Bryant across the hall to a room where the third accomplice was engaged in making a statement. Bryant still declined to make a statement. Officer DiPaula testified that he phoned the public defender's office so as to obtain an attorney for Bryant, but no attorneys were available at that time, as all public defenders were out on other assignments. He was additionally informed that he would be put into a cell until a lawyer could be contacted. At that point, Bryant decided that he also would make a statement. Prior to the actual making of the statement, Officer DiPaula again read to Bryant the *Miranda* warnings.

The trial judge said, with respect to the issue of voluntariness:

> "I find that he [Officer DiPaula] did not, in fact, say that it would be better for . . . [Bryant] to sign the statement. . . . All he did say was that the other two were signing a statement, and then when the prisoner said, 'Well, I still don't want to sign one unless an attorney is present,' the officer said, 'That's all right. It's within your rights. You don't have to sign one.'
>
> The evidence is that then later, five minutes later, the prisoner waived his rights to remain silent which he had asserted twice. He decided he would write a statement anyway. . . .
>
> . . .
>
> . . . Well, the law is as I gathered from arguments and as I remember from my own reading of it, that a person who has a Constitutional right to have a lawyer present, and that a person also has the capacity if he is compos mentis, understanding what he is doing, to waive that Constitutional right just as he has the capacity to waive his Constitutional right to a jury trial after once

> electing to be tried by a jury. And that being the law, I find that having twice asked for an attorney, and the third time having said, well, I'm ready to write a statement without an attorney, that his Constitutional rights are not violated when the officer then takes the statement instead of waiting till the attorney arrives. Under the circumstances present as is revealed by the testimony, I find that the Motion to Suppress ought to be denied. Therefore, I deny the Motion to Suppress."

The judge was mistaken for the reasons we have stated *ante* in Part I.

When Bryant exercised his right to have counsel present, all interrogation should have ceased. Instead, it was continued by the officer's using the ploy of keeping him in the same room with Ham, while Ham wrote a statement and also of taking Bryant into a room where the other accused was making a statement. Such action on the part of the police was obviously calculated to underpin the detective's statement to Bryant that the accomplices had confessed.

Patently, the detective was endeavoring to cause Bryant to retreat from the *Miranda* fortress and to surrender his will to the officer because the battle was lost anyhow. It is precisely that type of "persuasion," duress, coercion, or intimidation that is forbidden by *Miranda* and *Edwards*.

The statement of Bryant should have been suppressed. Therefore, we shall reverse Bryant's conviction and remand his case for a new trial.

C.

Bryant and Ham argue that the evidence was insufficient to sustain the convictions inasmuch as the victim consented to the sexual act. The victim, however, said that she was ravished and forced to commit the perverted acts. The jury obviously believed the victim and not the defendants.

The credibility of the witness is a matter for the trier of fact to weigh and determine. *Barnes v. State*, 31 Md. App.

25, 354 A.2d 499 (1976). We cannot say that they were wrong in the conclusion they drew from the testimony and from the assessment of credibility. The jury was not required to believe Ham's exculpatory statement. *Wilson v. State*, 7 Md. App. 41, 253 A.2d 439 (1969).

Appellants contend that because the victim made contradictory statements with respect to whether she had ever seen the appellant, Ham, before the incident, her testimony is unbelievable. *See Bailey v. State*, 16 Md. App. 83, 294 A.2d 123 (1972). The law, however, is that if the jury believed the victim, as it obviously did, it could reasonably find, beyond a reasonable doubt, that the appellants were guilty. *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). *Mitchell v. State*, 44 Md. App. 451, 409 A.2d 260 (1979).

D.

Lastly, we reject appellants' allegation that the trial judge erred in not permitting Ham to testify under the "state of mind" exception to the hearsay rule to statements supposedly made by the victim's boyfriend to Ham shortly after the incident. Appellants aver that such testimony would have bolstered their contention that there had been no rape, and that the injuries to the victim were the result of her having been beaten by her boyfriend when he returned to the apartment.

Hearsay utterances are permitted into evidence for the purpose of showing the state of mind of the out-of-court declarant, and not for the truth of the statement offered. 6 *Wigmore on Evidence* § 1790 (rev. ed. 1976).

The offered testimony was irrelevant. If the appellants desired to establish that the victim's "boyfriend" was the

person who "beat" her, then they should have summoned the "boyfriend" and obtained his sworn testimony.

Judgments as to the appellant, Bryant, reversed, and case remanded for a new trial.

Costs not to be allocated. Md. Rule 1082f.

Judgments as to the appellant, Ham, affirmed.

One-half of the costs to be paid by appellant Ham.

STATE OF MARYLAND

v.

ROBERT L. BRYANT

In the
Court of Appeals
of Maryland

Petition Docket No. 359
September Term, 1981
(No. 1610, September Term, 19 80
Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: October 7th, 1981.

EXHIBIT B

Opposition

Office-Supreme Court, U.S.
FILED
APR 1 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-1291

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

STATE OF MARYLAND,

Petitioner

V.

ROBERT LAMONT BRYANT,

Respondent

ON WRIT OF CERTIORARI

TO THE COURT OF SPECIAL APPEALS OF MARYLAND

BRIEF IN OPPOSITION

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ON WRIT OF CERTIORARI

TO THE COURT OF SPECIAL APPEALS OF MARYLAND

BRIEF IN OPPOSITION

QUESTION PRESENTED

Did Respondent voluntarily waive his previously invoked right to have counsel present during custodial interrogation?

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OPINION BELOW

The opinion of the Court of Special Appeals of Maryland is reported at 49 Md. App. 272, 431 A.2d 714 (1981).

JURISDICTION

Respondent was convicted of rape and related offenses by a jury in the Circuit Court for Baltimore County on August 21, 1981. His convictions were reversed by the Court of Special Appeals of Maryland in Bryant v. State, 49 Md. App. 272, 431 A.2d 714 (1981). The State of Maryland subsequently petitioned the Court of Appeals of Maryland to issue a writ of certiorari. The petition for a writ of certiorari was denied by the Court of Appeals of Maryland on October 7, 1981.

The jurisdiction of this Court to review the decision of the Court of Special Appeals of Maryland is invoked under 28 U.S. C. § 1257 (3).

STATEMENT OF THE CASE

Respondent filed a pre-trial motion to suppress a written statement taken during police interrogation on the morning of his arrest. The motion to suppress was heard immediately prior to trial.

Officer Michael Di Paula testified that he met Respondent in the interrogation room of the Garrison Police Station at approximately 7:30 a.m. An alleged accomplice, Cleveland Ham, Jr., and another police officer were in the same room. When Miranda warnings were first read to Respondent, he told Officer Di Paula that he would like to talk to an attorney before giving a statement. No questions were asked.

Respondent was kept in the interrogation room while Officer Di Paula completed his arrest report. As he waited, Respondent could see Ham giving a written statement to the police.

When Respondent attempted to explain his innocence, Officer Di Paula told him that Ham and another alleged accomplice (Courtney)[1] were giving statements implicating him and that he could put anything in a statement he wanted regarding his guilt or innocence.

Sometime after 8:00 a.m., Officer Di Paula called the Public Defender's Office. Respondent was told that they would try to get a lawyer to see him as soon as one was available. Officer Di Paula continued:

> "He continued to tell me, you know, his innocent part in the rape. He said he was, you know, there at the scene of the crime. However, you know, he continued to stress out how he was innocent of the rape to me. And at that time, I told him, I said, well, you know, I'm not going to -- if you want to make a statement, a written statement like your friends are, it's totally up to you. But I said if you feel you are innocent in this case, I said the statement doesn't have to be a confession. You can put anything you want in there regarding your innocence or your guilt." (Emphasis added)

Respondent agreed to give a written statement at approximately 9:30 a.m. After signing a written Miranda waiver form, he again hesitated. Officer Di Paula "advised him that that was fine, and that if he didn't wish to make a written statement like his friends or acquaintances did, after the preliminary paper work would only take another five more minutes, we would put him in a cell until the time for his hearing." Respondent then gave a written statement.

Respondent elected to testify in support of his motion to suppress. He explained that he was arrested at home and taken to the police station at approximately 5:30 a.m. Shortly thereafter, he was interviewed by Officer Di Paula. When Officer Di Paula advised him of his Miranda rights, Respondent refused to give a statement explaining that he would prefer to have a lawyer there because he didn't want to be misunderstood. He was then

---

[1] At some point, Officer Di Paula actually took Respondent across the hall to the room where Courtney was engaged in making a statement.

returned to his cell.

Approximately one-half hour later, Respondent was placed in the interrogation room with Ham. There Officer Di Paula "kept more or less nagging" him to give a written statement. Respondent eventually gave Officer Di Paula a written statement because he made Respondent "more or less look and feel like and was making a big mistake by not writing a statement, right, because these two guys were writing a statement." Respondent acknowledged reading and signing a Miranda waiver form before he gave his statement.

At the conclusion of the suppression hearing, the trial court denied the motion to suppress finding "that having twice asked for an attorney, and the third time having said, well, I'm ready to write a statement without an attorney, that his Constitutional rights are not violated when the officer then takes the statement instead of waiting till the attorney arrives."

REASONS FOR DENYING THE WRIT

1. The petition does not set forth special and important reasons for granting certiorari.

The sole reason advanced by Petitioner for granting a writ of certiorari is that the instant case presents this Court:

> "with an important and substantial opportunity to establish guidelines, for lower courts and police alike, by which the behavior of the police can be assessed when the 'not unusual' situation occurs where the arestee 'who previously has expressed an unwillingness to talk or a desire to have a lawyer. . .change[s] his mind and even welcome[s] an opportunity to talk." (Emphasis added)

This argument is without merit. Petitioner has failed to show that there is, in fact, a need at this time for more precise guidelines from the Court. In Edwards v. Arizona, 451 U.S.____, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981), the Court held that "an accused . . ., having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless

the accused himself initiates further communication, exchanges or conversations with the police." The standard is thus clear. Whether an accused ". . .initiates further communications" or merely "responds to further police initiated custodial interrogation" is a question that is best decided on a case-by-case basis.

2. The Court of Special Appeals of Maryland correctly decided that Respondent did not voluntarily waive his previously invoked right to have counsel present during custodial interrogation.

Relying on this Court's decisions in Edwards, supra. and Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), the Court of Special Appeals of Maryland held that Respondent's written statement should have been suppressed:

> "When Bryant exercised his right to have counsel present, all interrogation should have ceased. Instead, it was continued by the officer's using the ploy of keeping him in the same room with Ham, while Ham wrote a statement and also taking Bryant into a room where the other accused was making a statement. Such action on the part of the police was obviously calculated to underpin the detective's statement to Bryant that the accomplices had confessed.
>
> Patently, the detective was endeavoring to cause Bryant to retreat from the Miranda fortress and to surrender his will to the officer because the battle was lost anyhow. It is precisely that type of "persuasion," duress, coercion, or intimidation that is forbidden by Miranda and Edwards." Bryant v. State, 49 Md. App. 272, 283, 431 A.2d 714 (1981)

Respondent submits that this decision is clearly correct. The interrogation technique of Officer Di Paula was "designedly and deliberately" employed to elicit incriminating information. See Brewer v. Williams, 430 U.S. 387, 399, 97 S.Ct. 1232, 51 L.Ed.2d 424 (1977). As this Court recently concluded in Rhode Island v. Innis, 446 U.S. 291, 300, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980):

> "the Miranda safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term "interrogation" under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect."

Under these circumstances, Respondent's protestations of innocence cannot reasonably be construed as an effort to countermand his earlier invocation of the right to have counsel present during custodial interrogation.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari to the Court of Special Appeals of Maryland should be denied.

Respectfully submitted,

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No. 81-1291

IN THE

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STATE OF MARYLAND,

Petitioner

V.

ROBERT LAMONT BRYANT,

Respondent

ON WRIT OF CERTIORARI

TO THE COURT OF SPECIAL APPEALS OF MARYLAND

BRIEF IN OPPOSITION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of April, 1982, a copy of the Brief in Opposition was hand-delivered to Philip M. Andrews, Assistant Attorney General, One South Calvert Building, Baltimore, Maryland 21202.

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NO. 81-1291

IN THE

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ROBERT LAMONT BRYANT,

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ON WRIT OF CERTIORARI

TO THE COURT OF SPECIAL APPEALS OF MARYLAND

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

The Respondent, Robert Lamont Bryant, who is indigent and who has been found to meet the qualifications for representation by the Office of the Public Defender for the State of Maryland, at the time of his trial and at appellate proceedings thereafter, asks leave to file the attached Brief in Opposition without prepayment of costs and to proceed in forma pauperis pursuant to Rule 46.

The petitioner's affidavit in support of this Brief is attached hereto.

George E. Burns, Jr.

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NO. 81-1291

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

STATE OF MARYLAND,

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ROBERT LAMONT BRYANT,

Respondent

ON WRIT OF CERTIORARI

TO THE COURT OF SPECIAL APPEALS OF MARYLAND

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, Robert Lamont Bryant, being first duly sworn, depose and say that I am the Respondent, in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? NO

(a) If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

(b) If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

JAN 23 1982 Amount 200.00 2 month's week

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? NO

(a) If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account?

NO

(a) If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (exclusing ordinary household furnishings and clothing)? NO

(a) If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

Sharon Bryant Denise Bryant La'Keeth Bryant Robert L Bryant JR

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Robert L Bryant

ROBERT LAMONT BRYANT

Subscribed and sworn to before me, a Notary Public this

4 day of March, 1982.

Charles L Simmons

Notary Public

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

Judge